

In the Court of Appeals of the State of Alaska

Etta Bavilla,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13897**

Order

Representation Hearing

Date of Order: **December 29, 2021**

Trial Court Case No. **3DI-19-00119CI, 3DI-98-00362CR**

The Appellant, Etta Bavilla, is currently represented at public expense by the Public Defender Agency. The Agency has filed a motion asking this Court to remand this case for a representation hearing. The Agency explains that Bavilla requests the hearing because she is concerned about the Agency's intent to request the maximum extension under this Court's Standing Order 12 for filing her opening brief, and because she has concerns about a potential conflict of interest with the Agency's current representation of her as a result of past representation by Agency lawyers.

Although Bavilla is concerned about the Agency's intent to request under this Court's Standing Order 12 the maximum extension of time for filing her opening brief, that request is within the Agency's discretion and is not good cause for appointing a different attorney or agency to represent Bavilla at public expense. Standing Order 12 is the result of this Court's recognition of the backlog facing this Court and the agencies that represent appellants before the Court. The underlying problem is that there are too many criminal appeals compared to the number of lawyers available to brief those appeals. While it may be tempting to order the Public Defender Agency to speed up its briefing in this case, this would create a cascading delay of the briefing in all the other criminal appeals currently being handled by the Agency. There are only so many attorneys who're both (1) available and (2) competent to write a criminal appeal.

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However, regarding Bavilla's concern about a potential conflict of interest with the Agency's current representation of her as a result of past representation by Agency lawyers, this Court concludes a remand is necessary.

Accordingly, **IT IS ORDERED:**

1. The motion for a representation hearing is **GRANTED**. The case is remanded to the superior court to determine whether there is a conflict of interest with the Public Defender Agency's current representation of Bavilla as a result of past representation by Agency lawyers. If the superior court determines there is a conflict, the court shall appoint the Office of Public Advocacy to represent Bavilla.

2. The superior court is directed to provide this Court with a report on this matter on or before **January 20, 2022**. At the request of the superior court, this deadline may be extended.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', is written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

cc: Trial Court Clerk

Distribution:

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